1947. File No. B.C.S.Rs II/47

Legal DEPARTMENT

B BRANCH

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Subject.— Rules and notifications under the Bombay Civil Services Rules

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C O N T E N T S.

Legal Department File No. D.C.S. Re.II/47.

Or. No.	Compilation No.	Subject	pages.
		The Bombay Civil Services Rules	
1.	U. R. to P. & S. D. No. 2432 dated 9-4-47.	Wide meaning of the word "associate", — non-use of —	1-2.
2.	U. R. to P. & S.D. No. 2513 Dated 14/3/47.	Revised scales of pay and representation to reconsider it — legality of —	3-6.
3.	U. R. to P. & S.D. No.6108 dated 11/6/47	Reduction in the salaries of the Govt. servants —	7-8.
4.	U. R. to P & S.D. No. 12008 dated 12/12/47.	Sec. 241 of the Govt. of India Act — Notfn. under	9-32.

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Madhav Mankeekar.

15/5.
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Office of the R.L.A.

The word "associate" in the draft amendment of rule 21 of the Bombay Civil Services Conduct, Discipline and Appeal Rules, suggested by the Political and Services Department would be too wide. A Government servant insuring his life would be associating with the insurance business. Therefore, the following amendment is suggested in place of the one proposed in para. 2 on page 11, namely :-

> " or carry on, whether directly or indirectly any business or undertaking or use his position as a Government servant to help such business or undertaking."

The use of the words "may not" in rule 21 is also not quite happy. It might be argued that he may as well engage in any trade, etc.

2. As regards the second part of the note of the Chief Secretary on page 12, Government has no such authority to call upon the wife of a Government servant to desist from her course.

sd/- D.V.V.

Remembrancer of Legal Affairs.

U. R. to P. & G.D. No. 3432 dated the 8th April 1947.

Madhav Mankodam.

15/5.

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The revised scales of pay were brought into force with retrospective effect from 1-8-1931 (vide G.R. F.D., No. 153-33 dated 18th April 1935). The Central Association of the Bombay Provincial, (Gazetted) Services has made a representation to Government contending that the orders of Government introducing the revised scales of pay are opposed to fundamental principles of justice and common law and requesting it to agree to forward its memorial to the Secretary of State. The Political and Services Department considers that the introduction of the revised scales of pay being done with the approval of the Secretary of State, the contention of the Association about the legality thereof is untenable and that the powers to determine the conditions being vested now in the Governor by virtue of delegation under section 241(3) read with section 258 (2) of the Government of India Act, 1935, no memorial can now lie to the Secretary of State. The Finance Department agrees with the view taken by the Political and Services Department. The Chief Secretary, however desires the R.L.A. to advise whether there is any substance in the view that the action of Government in respect of the introduction of the revised scales of pay and refusal to reconsider representations against that matter being reopened is solidly based on law.

2. The revised scales of pay were brought into force with retrospective effect from 1-8-31 by making the necessary amendments to the Bombay Civil ~~Services~~ Services Rules in 1935 (vide G.R.F.D. No. 153/33, dated the 18th April 1935). These amendments so far as they relate to the Provincial Services ~~cannot~~ derive their authority from the powers delegated to the Local Government under rule 41 of the Civil Services (Classification, Control and Appeal) Rules made by the Secretary of State for India in Council under section 96 B

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of the Government of India Act of 1919. Rule 9(1) of the Classification Rules, however, puts certain restrictions on the power of the Local Government to make rules under rule 41. It is laid down that nothing in any rule made under the said rules shall operate to affect to the disadvantage of any person to whom the said rules apply, the conditions of service in respect of pay, allowances, pensions or any other matters which are applicable to him——

(a) on the date the said rules came into force (27-5-30), or

(b) by virtue of any order or rule made by the Secretary of State in Council (e.g. rule 2 (1) (a) of the Fundamental Rules),

unless the rule was made with the previous sanction of the Secretary of State in Council. As held in paragraph 9 of R.L.A's opinion No. 731/P, dated 21-9-30 the Local Government had ~~passing~~ powers of framing rules to reduce the pay and increments of the officers recruited to the Provincial Services after 1st January 1922. To cover the cases of protection granted under clauses (a) and (b) it was necessary to obtain the previous sanction of the Secretary of State in Council in order to make the proposed amendments to the Bombay Civil Services Rules applicable to all the members of the Provincial Services. Such sanction was duly obtained as will be seen from the Government of India, Finance Department, Letter No. F.2 (10) R-I/34, dated the 16th February 1935 and the correspondence underlying it. All legal requirements were fulfilled and therefore the scheme of revised scales of pay introduced by ~~Government~~ Government is free from any legal objection.

3. Under section 241(2) (b) of the Government of India Act, 1935, subject to the provisions of section 52(1) (c), 561, 241 (3) (a), 242(4) and 250 (2), the power to make rules prescribing the conditions of service of persons serving His ~~Majesty~~ Majesty in connection with the affairs of a Province vests in the Governor. Under section 52 (1) (c) it is one of the

Madhav Raokadam.
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special responsibilites of the Governor ~~of~~ to safeguard the rights and legitimate interest of the members of the public services and under section 52(3) the Governor is required to use his individual judgment in this matter. Under section 56 the Governor is required to use his individual judment for amendment of the rules in their application to the police force. Under section 241 (3) (a) no order, which alters or interprets to the disadvantage of member of the public ~~xxxxx~~ service any rule by which his conditions of service were regulated can be made except by some person empowered by the Secretary of State. By the order of the Secretary of State published in Government of India, Finance Department, Notification, No. F. (12)- E I/37 dated 17-2-38, the Goyernnor in his individulajudgment has been empowered by the Secretary of State in this behlaf. Under section 242(4) the rules applicable to the staff attached to the High Court requir the Governor's approval. Section 258(2) also empowers the Governo exercising his individula judgement to make any rule or order affe- ~~xxxx~~ cting adversely the pay, allowances or pensions payable to a person appointed before 1.4-1937 to a Provincial service and to pass orders upon a memrial submitted by such person. In view of these privisions it would be competent for the Governor exercising his individual ~~judgement~~ judgment to decide the representation in question finally and to refuse to reopen the matter, without forwarding it to the Secretary of State.

4. Attention is however invited to R.L.A's opinion to the Finance Department, No. 231-P, dated the 29th September 1937 and ~~xx~~ R.L A's note dated the 30th November 1937 and the letter (copies of which are sent for reference) addressed to the Government of India by the Finance Department. It appears that the question of reducing salaries

of members of the Provincial Services appointed before 0-3-26 was considered not free from doubt. It is not known what reply was given by the Government of India to the Finance Department's I The Finance Department may be in a position to throw more light on the question.

sd/- D.V.V.

Secretariat of Legal Affairs.

U. O. R. to P. & S.D. No. 2513

Dated the 14th March 1947.

Madhav Rao Kotadam.

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It appears that the question about the powers of a Provincial Government to reduce the salaries of members of the Provincial services promulgated before 6-3-1926 has not been finally decided by the Central Government. Since however rules 41, 44 and 50(c) of the Bombay Civil Services Rules were framed with the previous sanction of the Secretary of State providing for reduction of pay of Government servants by a legal fiction, that is to say, by treating such servants as being transferred to a new post on the new pay, it could be argued that there was no breach of rule 9 of the Civil Services (Classification, Control and Appeal) Rules inasmuch as the consent of the Secretary of State could be inferred to the reduction of pay of such servants.

In view of the legal position stated by the Secretary of State in his last opinion No. 8513, dated the 14th March 1947, and in view of the impending political change that appears no objection to withhold the representation of the Association.

sd/- P.M.
11/6.

Secretary for Legal Affairs.

Y. T. t. . . C.S.O.'s. 613 dated the 11th June 1947.

Posting Officer.
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The draft notification at pp.111 to 131 ante, as amended is in order.

2. Clause I (2) (ii) of the notification. The addition of entries relating to the Chief Police Prosecutor, Bombay and the Coroner of Bombay after entry 14 in the sub-~~xxx~~ heading 'Magistrates' does not appear to be correct. The two entries should properly come under the sub-~~xxx~~ heading 'Miscellaneous' under Home Department as Nos.26B and 26C. The clause has been corrected accordingly.

3. Clause III (1). This proposes to insert a new rule for recruitment to the post of Saw Mill Engineer. A consequential addition in App. A under 'B.Posts' under Revenue Department is necessary. This has been done by amending clause I(1) of the notification.

4. Draft rule 98B in App. C. The reference to the General and Educational Departments in clause (b) (iii) is not now correct and has been changed to the Education and Industries Department.

5. Draft rule 108-B (ii) - The P. & S.D. draft refers to the Universities mentioned in the Schedule while the Schedule itself refers to degrees. It is presumed that the reference is to the degrees conferred by the Universities respectively mentioned against item in the Schedule. The ~~x~~ draft rule has been amended accordingly.

sd/-
12/12.
Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 12008, dated the 12th December, 1947.

Lucknow Bookdepot. 15/5. c/5.